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10 Attorneys for Defendant and Counterclaimant

11 UNITED NATIONAL INSURANCE COMPANY

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO/OAKLAND DIVISION

15 INTERSTATE FIRE & CASUALTY  
16 COMPANY,

17 Plaintiff,

18 v.

19 UNITED NATIONAL INSURANCE  
20 COMPANY and DOES 1 through 10.

21 Defendants

22 UNITED NATIONAL INSURANCE  
23 COMPANY,

24 Counterclaimant,

25 v.

26 INTERSTATE FIRE & CASUALTY  
27 COMPANY and Roes 1 through 10,

28 Counterdefendants.

Action No.: C 07-04943 JL

DECLARATION OF THOMAS NIENOW IN  
SUPPORT OF DEFENDANT AND  
COUNTERCLAIMANT UNITED  
NATIONAL'S MOTION FOR SUMMARY  
JUDGMENT.

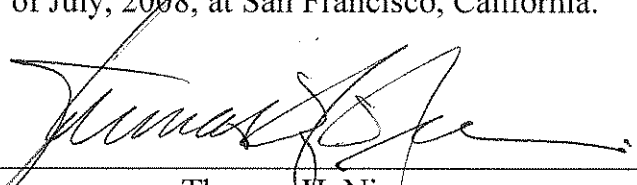
1 I, Thomas H. Nienow, declare as follows:

2 1. I am an attorney admitted to practice before this Court and I am Of Counsel  
3 with Nielsen Haley & Abbott LLP, counsel of record for defendant and counterclaimant  
4 United National Insurance Company in this matter. I am the attorney at my firm  
5 responsible for the day-to-day handling of this matter. The follow facts are based upon  
6 my personal knowledge, and I would competently testify to them if called as a witness in  
7 this matter.

8 2. I have reviewed numerous times United's claim file for the underlying  
9 litigation styled *Tracy v. Lovelace-Sandia Health Services dba Albuquerque Regional*  
10 *Medical Center*, State of New Mexico, Second Judicial District, County of Bernalillo, No.  
11 CV 2005 07009. I caused the nonprivileged portions of the claim file for the *Tracy* action  
12 to be Bates stamped, and then caused those documents to be produced to plaintiff and  
13 counterdefendant Interstate Fire & Casualty Company.

14 3. Attached hereto as Exhibit EE are true and correct copies of documents  
15 from United's claim file bearing Bates numbers UNIC0107 and UNIC 0108. I  
16 understand, and am informed and believe, that these documents reflect United National's  
17 transmission of its check for settlement of the *Tracy* action, which transmission, I  
18 understand, occurred on or about June 18, 2007.

19 I declare under penalty of perjury under United States law that the foregoing is true  
20 and correct. Executed this 21st day of July, 2008, at San Francisco, California.

21  
22  
23   
Thomas H. Nienow

# EXHIBIT EE

**THE INFORMATION ON THIS PAGE REPRESENTS A CLAIM CHECK  
ISSUED BY THE UNITEDAMERICA INSURANCE GROUP AND IS  
DOCUMENTATION OF PAYMENT.**

Check Number	0305553
Date Issued	6/15/07
Insurance Company	UNITED NATIONAL INSURANCE COMPANY
Claim Number	06008669
Insured Name	YENSON, LYNN, ALLEN & WOSICK
Claimant Name	MARILYN TRACY
Payee	BEN TRACY, AS PERSONAL REPRESENTATIVE OF THE ESTATE
Amount	\$100,000.00
Mail To Name	YENSON, LYNN, ALLEN & WOSICK
Address	ATTN.: JENNIFER JELSON 4908 ALAMEDA BLVD. NE ALBUQUERQUE, NM 87113
Comment	FULL AND FINAL SETTLEMENT OF ALL CLAIMS AGAINST C
Examiner (Name)	CRUZ DIANE
Loss/Expense	LOSS
Producer (Name & Address)	HEALTH CARE INSURERS 7011 CAMPUS DR. SUITE 200 A DIVISION OF RISK PLACEMENT SERVICES, INC. COLORADO SPRINGS, CO 80920

UNIC0107

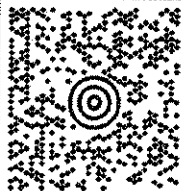

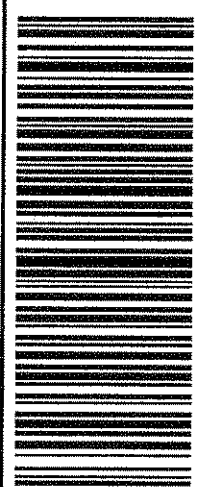

### UPS CampusShip: View/Print Label

1. **Print the label(s):** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed label at the dotted line.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**  
**Customers without a Daily Pickup**
  - o Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
  - o Hand the package to any UPS driver in your area.
  - o Take your package to a location of The UPS Store®, UPS Drop Box, UPS Customer Center or Authorized Shipping Outlet near you. Items sent via UPS Return Services (including Ground Returns) are accepted at any UPS Drop Box.
  - o To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

#### Customers with a Daily Pickup

- o Your driver will pickup your shipment(s) as usual.

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SHAWN LUSCHERAT UNITED NATIONAL INSURANCE CO THREE BALA PLAZA EAST BALA CYNWYD PA 19004	LTR	1 OF 1
<b>SHIP TO:</b> ATTN: JENNIFER JELSON YENSON, LYNN, ALLEN & WOSICK 4908 ALAMEDA BLVD. NE ALBUQUERQUE NM 87113-1736		
	<b>NM 871 9-02</b> 	<b>UPS NEXT DAY AIR SAVER 1P</b> TRACKING #: 1Z R2R 232 13 9112 5401
		
BILLING: P/P		
COST CENTER: 3.0 Department: Claims		
 CS 9.0.25.0 WXP3E60 64.0A 02/2007		

UNIC0108

*Interstate Fire & Casualty Company v. United National Ins. Co.*  
United State District Court, Northern District Court No.: C 07-04943 MHP

**PROOF OF SERVICE**

I declare that:

I am a citizen of the United States, employed in the County of San Francisco. I am over the age of eighteen years, and not a party to the within cause. My business address is 44 Montgomery Street, Suite 750, San Francisco, California 94104. On the date set forth below I served the following document(s) described as:

**DECLARATION OF THOMAS NIENOW IN SUPPORT OF DEFENDANT AND COUNTERCLAIMANT UNITED NATIONAL'S MOTION FOR SUMMARY JUDGMENT**

☐ (BY FACSIMILE) by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date.

☐ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California.

☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).


☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

☒ (BY ELECTRONIC SERVICE) by submitting an electronic version of the document(s) to be served on all parties listed on the service list on file with the court as of this date.

**Attorney for Plaintiff, Fireman's Fund Ins. Co.**

Christopher J. Borders  
Casey A. Hatton  
Hinshaw & Culbertson LLP  
One California Street, 18th Floor  
San Francisco, CA 94111  
Tel: (415) 362-6000  
Fax: (415) 834-9070

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 21, 2008, at San Francisco, California.

  
\_\_\_\_\_  
Fatima Puente